



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

APR - 6 2010

VIA FEDERAL EXPRESS

The City of New York  
c/o Michael A. Cardozo, Esq.  
New York City Corporation Counsel  
New York City Law Department  
100 Church Street  
New York, NY 10007

Re: Newtown Creek Superfund Site, Kings County and Queens County, New York

Notice of Potential Liability Pursuant to the Comprehensive Environmental Response,  
Compensation, and Liability Act, 42 U.S.C. Sections 9601-9675

Dear Mr. Cardozo :

The U.S. Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. Sections 9601-9675, (also known as the "Superfund" law). More information about CERCLA, including a copy of the Superfund law, may be found at [www.epa.gov/superfund](http://www.epa.gov/superfund).

EPA has documented the release and threatened release of hazardous substances into the environment at the Newtown Creek Superfund Site (the "Site") located in Kings County and Queens County, New York. EPA has proposed the Site for listing on the national priorities list, a list of national priorities among the known releases and threatened releases throughout the United States, which list was established and is updated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. In response to the release and threatened release of hazardous substances into the environment at the Newtown Creek Site, EPA has spent public funds and anticipates spending additional public funds pursuant to CERCLA in performance of response actions at or in connection with the Site.

Newtown Creek is a tidal arm of the New York-New Jersey Harbor Estuary that forms the northwestern-most border between the New York City boroughs of Brooklyn and Queens. It is a tributary of the East River and it itself includes five branches (or tributaries) along its 3.8-mile reach. Historically, Newtown Creek drained the uplands of western Long Island and flowed through wetlands and marshes. However, due to heavy industrial development dating from the

1800's, formerly wet areas have been filled, the Creek has been channelized, and its banks have been stabilized with bulkheads and rip rap.

By the 1850s, the area surrounding and adjacent to Newtown Creek had become highly industrialized. By 1870, more than 50 petroleum refineries were located along the banks of Newtown Creek and, by the close of the 19th century, the Creek was lined with oil refineries and petrochemical plants, fertilizer and glue factories, copper-smelting and fat-rendering plants, shipbuilders, sugar refineries, hide tanning plants, canneries, sawmills, paint works, and lumber and coal yards. During its industrial past, Newtown Creek was crowded with commercial vessels, including large boats bringing in raw materials and fuel and taking out oil, fat, varnish, chemicals, and metals. However, as the region developed, wetlands, marshes surrounding the Creek and portions of the Creek and its tributaries were filled or otherwise covered over, and nearly the entire Creek was lined with bulkheads, cutting off natural freshwater flow so that the current flow into Newtown Creek consists largely of storm water runoff, combined sewer overflows, and discharges from permitted and unpermitted pollution sources.

The Site includes contaminated sediments for which there are numerous possible sources. Sampling events have shown the sediments in the Creek to be contaminated with a variety of hazardous substances which traverse almost the entire length of the Creek, and which include a wide variety of metals, pesticides, polycyclic aromatic hydrocarbons, phthalates, polychlorinated biphenyls and volatile organic contaminants.

The contaminants may have entered Newtown Creek via several transport pathways or mechanisms, including spillage during product shipping and handling, direct disposal or discharge, contaminated groundwater discharge, surface water runoff, storm water discharge and contaminated soil erosion.

Under CERCLA and other laws, responsible parties may be held liable for monies expended by the federal government in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial and enforcement actions. Responsible parties also may be subject to orders requiring them to take response actions themselves.

Responsible parties under CERCLA include current or past owners or operators of a facility or persons who arrange for disposal or treatment of hazardous substances at a facility from which there is a release or a threatened release of a hazardous substance which causes the incurrence of response costs.

EPA has evaluated information obtained in connection with the Site which indicates that waste materials containing hazardous substances were disposed of by the City of New York and its municipal predecessors at dump sites in marshlands, swamps or other low lying areas that were part of, adjacent to or in very close proximity to Newtown Creek, through placement of waste materials as fill onto such marshlands, swamps or other low lying areas, and through operation of

waste transfer stations that were owned or operated by the City and its municipal predecessors and that were located adjacent to Newtown Creek, that hazardous substances were released by the City and its predecessor municipalities through sewers that drained directly or indirectly into Newtown Creek and through combined sewer overflow into Newtown Creek, and that hazardous substances were released from facilities that were formerly owned and operated by the City of New York, including municipal incinerators located adjacent to or in very close proximity to Newtown Creek. Hazardous substances released from such activities came to be located in Newtown Creek. Thus, by this letter, EPA is notifying you that the EPA has reason to believe that the City of New York is a potentially responsible party with respect to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

Attachment A to this letter is a list of the other persons who have previously received notice from EPA of their potential liability under CERCLA ("PRPs") for the Newtown Creek Superfund site. The PRPs identified on Attachment A have formed a PRP group identified as the Newtown Creek Group. EPA is continuing its efforts to identify additional PRPs related to the Site and EPA anticipates that will identify such additional PRPs.

EPA has commenced negotiations with the Newtown Creek Group seeking their agreement to perform a remedial investigation and feasibility study ("RI/FS") at the Site in order to characterize site conditions, determine the nature and extent of the contamination at or from the Site, assess risks to human health and the environment and to develop and evaluate remedial alternatives for the Site. Any agreement to perform the RI/FS would be memorialized in an Administrative Settlement Agreement and Order on Consent ("Settlement Agreement and Order") to be issued by EPA to those parties who agree to consent, pursuant to CERCLA Sections 104, 107 and 122, 42 U.S.C. §§ 9604, 9607 and 9622.

EPA requests that New York City participate as a cooperating party pursuant to the Settlement Agreement and Order for the RI/FS at the Site. As a cooperating party, the City, along with the other currently identified PRPs, and other PRPs who may hereafter be identified by EPA and who elect to cooperate in this response action, would perform and fund the RI/FS under the Settlement Agreement and Order. EPA anticipates that following the completion of the RI/FS, a remedial action or actions will be selected for the Site pursuant to CERCLA. However, EPA currently is asking only that the cooperating parties commit to undertaking the RI/FS. EPA may seek enforcement against non-cooperating PRPs pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and § 9607(a), and other applicable laws.

Thus, EPA encourages the City to contact the Newtown Creek Group to discuss its participation in the Settlement Agreement and Order to perform and/or fund the RI/FS. In order to contact the PRP Group, the City may contact the common counsel retained to represent the Newtown Creek Group as follows:

Dennis M. Reznick, Esq.  
Edwards Angell Palmer & Dodge LLP  
One Giralda Farms  
Madison, New Jersey 07940  
Telephone: (973) 520-2314  
E-mail: [dreznick@eapdlaw.com](mailto:dreznick@eapdlaw.com)

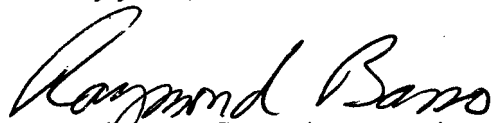
The Settlement Agreement and Order would generally follow EPA's model for such documents and would implement a workplan currently being developed by EPA and the Newtown Creek Group. EPA's current model Administrative Settlement Agreement and Order on Consent for performance of an RI/FS may be viewed on the internet at:  
<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rev-aoc-rifs-mod-04-mem.pdf> (EPA's later revisions to this model are available at:  
<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-settle-arc-mem.pdf>).

Please advise EPA in writing within thirty days of the date of this letter, as to whether the City intends to participate in the performance of the RI/FS at the Site by joining the settlement that is being negotiated between EPA and the Newtown Creek Group. EPA requests that the City address such written communication to Assistant Regional Counsel Michael A. Mintzer at the following address:

Michael A. Mintzer, Assistant Regional Counsel  
Office of Regional Counsel, Region 2  
U.S. Environmental Protection Agency  
290 Broadway - 17th Floor  
New York, New York 10007-1866  
E-mail: [mintzer.michael@epa.gov](mailto:mintzer.michael@epa.gov)

If you have any questions regarding this Notice of Potential Liability, the proposed Settlement Agreement and Order, or other legal matters regarding the Site, please call or have your staff member assigned to this project call Michael A. Mintzer at 212-637-3168. For technical matters regarding the Newtown Creek site, please contact Caroline Kwan of EPA Region 2's Emergency and Remedial Response Division at 212-637-4275.

Sincerely yours,



Raymond Basso, Strategic Integration Manager  
Emergency and Remedial Response Division

cc: Susan Amron, Esq.

## Attachment A

### Persons identified by the United States Environmental Protection Agency as Potentially Responsible Parties for the Newtown Creek Superfund Site, Pursuant to The Comprehensive Environmental Response, Compensation, and Liability Act

BP America, Inc.

The Brooklyn Union Gas Company d/b/a National Grid NY

ExxonMobil Oil Corporation

Phelps Dodge Refining Corporation

Texaco, Inc.